

BERNICK AND LIFSON

A PROFESSIONAL ASSOCIATION

ATTORNEYS AT LAW

SUITE 1200, THE COLONNADE

5500 WAYZATA BOULEVARD

MINNEAPOLIS, MINNESOTA 55416-1270

TELEPHONE (612) 546-1200

FACSIMILE (612) 546-1003

ROSS A. SUSSMAN

NEAL J. SHAPIRO

SAUL A. BERNICK*

THOMAS D. CREIGHTON

SCOTT A. LIFSON

DAVID K. NIGHTINGALE†

PAUL J. QUAST*

THERESA M. KOWALSKI

REBECCA J. HELTZER

ROBERT J. V. VOSE

†ALSO ADMITTED IN WISCONSIN
*ALSO CERTIFIED PUBLIC ACCOUNTANT

LEGAL ASSISTANTS

JO BROWN

JOAN M. SCHULKERS

KATHRYN G. MASTERMAN

April 10, 1996

VIA FEDERAL EXPRESS

Office of the Secretary
Federal Communications Commission
Room 222
1919 "M" Street N.W.
Washington, D.C. 20554

RECEIVED

APR 11 1996

DOCKET FILE

Re: In the Matter of Implementation of Section 302 of the Telecommunications Act of
1996 - Open Video Systems
CS Docket No. 96-46

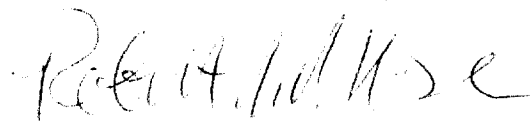
Dear Sir or Madam:

Enclosed for filing with the Federal Communications Commission, please find the original
and 11 copies of Reply Comments in connection with the above-referenced matter.

If you have any questions, do not hesitate to contact me.

Very truly yours,

BERNICK AND LIFSON, P.A.



Robert J. V. Vose

RJVV/rs
Enclosures

cc: Mr. Larry Walke, Cable Services Bureau
International Transcription Services, Inc.

File of Copies rec'd
4/11/96

0211

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

APR 11 1996

In the Matter of:

Implementation of Section 302 of the
Telecommunications Act of 1996

Open Video Systems

CS Docket No. 96-46

TO: The Commission

**REPLY COMMENTS OF THE BELOW-NAMED POLITICAL SUBDIVISIONS
OF THE STATE OF MINNESOTA**

The following political subdivisions of the State of Minnesota respectfully submit these reply comments to the Federal Communications Commission ("Commission" or "FCC") in the above-captioned proceeding:

North Suburban Cable Communications
Commission

Representing the Minnesota Cities of Arden Hills, Falcon Heights, Lauderdale, Little Canada, Mounds View, New Brighton, North Oaks, Roseville, St. Anthony and Shoreview.

Burnsville/Eagan Cable
Communications Commission

Representing the Minnesota Cities of Burnsville and Eagan.

Quad Cities Cable Communications
Commission

Representing the Minnesota Cities of Anoka, Champlin, Ramsey and Andover.

North Central Suburban Cable
Communications Commission

Representing the Minnesota Cities of Blaine, Centerville, Circle Pines, Coon Rapids, Ham Lake, Lexington, Lino Lakes and Spring Lake Park.

Columbia Heights Communications Commission	Representing the Minnesota City of Columbia Heights.
Lake Minnetonka Telecommunications Commission	Representing the Minnesota Cities of Deephaven, Excelsior, Greenwood, Long Lake, Medina, Minnetonka Beach, Minnetrista, Orono, St. Bonifacius, Shorewood, Spring Park, Tonka Bay, Victoria and Woodland.
Sherburne/Wright Counties Cable Communications Commission	Representing the Minnesota Cities of Big Lake, Buffalo, Cokato, Dassel, Delano, Elk River, Maple Lake, Monticello, Rockford, and Watertown.
South Washington County Cable Communications Commission	Representing the Minnesota Cities of Newport, St. Paul Park, Woodbury, Afton, and Cottage Grove, and the Minnesota Townships of Grey Cloud and Denmark.
Ramsey/Washington Counties Cable Communications Commission	Representing the Minnesota Cities of Birchwood, Dellwood, Grant, Lake Elmo, Mahtomedi, Maplewood, North St. Paul, Oakdale, Vadnais Heights, White Bear Lake, White Bear Lake Township, and Willernie.

All such jurisdictions are collectively referred to herein as the “Cities”.

I. INTRODUCTION

On March 11, 1996, the Commission released a Notice of Proposed Rulemaking (FCC 96-99) (“Notice”), requesting comment on how it should implement the regulatory framework for open video systems (“OVS”). In response, the Cities filed Joint comments to promote Congress’ goals including flexible entry into the video services market for telephone companies and regulatory streamlining while maintaining important local interests. In addition, the National League of Cities, the National Association of Telecommunications Officers and Advisors, the National Association of Counties, the U.S. Conference of Mayors, Montgomery County, and several cities (hereinafter “NLC”), filed joint comments containing specific proposals for implementing the OVS regulatory framework.

In their comments, both the Cities and the NLC identified key principles that must guide the Commission in formulating its rules. Particularly, the Commission's rules regarding the PEG and other Title VI requirements mandated by Congress for OVS must ensure that OVS operators will meet local community needs and interests. Further, the Commission must recognize that the 1996 Telecommunications Act does not permit cable operators to become OVS operators. Finally, the Commission's rules must acknowledge the property interests that local governments hold in the local public rights-of-way, and the Commission must ensure the payment of fees in lieu of franchise fees by OVS operators.

In addition, the Cities strongly support the NLC's comments, which include a discussion of nondiscrimination provisions to ensure open and affordable access to OVS. The Cities urge the Commission to adopt the principles set forth in the Cities' and NLC's prior comments regarding formulation of the OVS rules. The Cities briefly discuss below their experience in creating and implementing PEG obligations that meet critical local needs.

II. DISCUSSION

The Commission's statutory mandate in adopting PEG requirements for OVS is clear. The Telecommunications Act of 1996 requires the Commission to establish PEG obligations for OVS that are consistent with local needs and interests, and to impose on an OVS operator obligations equivalent to those obligations imposed on cable operators.¹

¹ See Comments of Below-Named Political Subdivisions of the State of Minnesota at 5-6.

To fulfill these mandates, the Commission should, as proposed by the Cities and supported by the NLC, require OVS operators to negotiate PEG access agreements acceptable to the affected communities.² The Cities note that the NLC suggests a “match or negotiate” scheme. The Cities continue to assert that a match requirement is a second-best alternative which affords somewhat less flexibility.³

The record in this proceeding amply demonstrates that local governments, in their role both as franchising authorities and PEG programmers, play a critical role in ensuring that local communications needs and interests are met.⁴ Moreover, local governments, as the National Cable Television Association states, “are in the best position to deliver on the Act’s intent to accomplish PEG access over open video systems.”⁵

In the last year alone, the Cities in conjunction in some cases with an affiliated non-profit access center, ensured the production by thousands of PEG access producers of

² Id. at 7-8, 10.

³ Id. at 9, no. 4.

⁴ See e.g., Id. at 7 (franchising authorities have “considerable experience in successfully negotiating, creating and implement ... PEG obligations”); Comments and Petition for Reconsideration of the National Cable Television Association, Inc. at 34 (“The local franchising authority is the governmental entity best positioned to appreciate community needs and most experienced in the implementation of PEG access rules”); and Joint Comments of Cablevision Systems Corporation and the California Cable Television Association at 21 (“Congress certainly understood that PEG access requirements are now imposed by localities to meet critical localism goals”).

⁵ Comments and Petition for Reconsideration of the National Cable Television Association, Inc. at 33. See also, Comments of MFS Communications Company, Inc. at 27 (“The manner in which OVS operators and/or their customer programmers comply with the PEG obligations should generally be worked out between the programmer and the local government entity that oversees the implementation of these rules for cable operators”).

nearly 100,000 hours of new programming, including literally thousands of unique public, religious, governmental, educational and community interest programs and hundreds of radio programs. For example, the North Suburban Access Corporation, affiliated with the North Suburban Cable Commission, reports working with 174 producers to produce and air 9025 hours of programming including 338 new video programs and 49 radio programs aired via the cable system.

It is important to note that the Cities provide vastly disparate programs and types of programming pursuant to vastly disparate and individually negotiated PEG access obligations. In certain of the Cities, local government programming is of great concern, is highly watched and receives the greatest funding and support. In other of the Cities, local community interest programming and public access (“video soapbox”) programming is of the greatest importance. Similarly, in some of the Cities there is an emphasis toward high production standards and professional quality programming while other communities focus on providing for the widest range of video speakers and listeners. What is of critical importance is that these widely disparate considerations have been addressed at the local level to meet local needs and interests, and are secured by obligations negotiated by local government. The Cities strongly urge the Commission to maintain this local emphasis in adopting OVS rules.

III. CONCLUSION

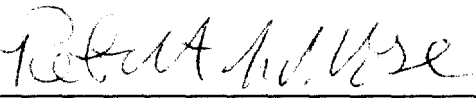
The Cities respectfully request the Commission to adopt a framework for OVS consistent with the proposals and principles previously recommended by the Cities and the NLC, et al., in their comments.

Respectfully submitted on behalf of the
above-named political subdivisions of the
State of Minnesota.

BERNICK AND LIFSON, P.A.

By 

DATED: April 10, 1996

By 

Thomas D. Creighton, #1980X
Robert J. V. Vose, #251872
Suite 1200 The Colonnade
5500 Wayzata Boulevard
Minneapolis, Minnesota 55416
(612) 546-1200
Fax (612) 546-1003
C:\TDC\CABLE\COMMENTS.003